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February 8, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 12, 2006

Case Number: TSO-0412

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ For the reasons set forth below, I conclude that the individual's security clearance should not be restored at this time.

I. BACKGROUND

The individual is employed by a Department of Energy (DOE) contractor and was granted a security clearance in connection with that employment. In May 2005, a Personnel Security Specialist from the DOE's local security office conducted an interview with the individual. During this Personnel Security Interview (PSI), the individual made certain statements that called into question his continued eligibility for access authorization. After the PSI, the individual was referred to a local psychiatrist for a DOE-sponsored evaluation. The psychiatrist (hereinafter referred to as "the DOE psychiatrist") subsequently submitted a written report to the local security office setting forth the results of that evaluation.

After reviewing all of the information in the individual's personnel security file, including the results of the interview and the psychiatric evaluation, the local security office determined that derogatory information existed that cast into doubt the individual's continued eligibility for a security clearance. The manager of the local DOE office informed the individual of this determination in a letter that set forth in detail the DOE's security concern and the reasons for that concern. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

The individual requested a hearing on this matter. The local security office forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer. The DOE introduced eight exhibits into the record of this proceeding and presented the testimony of the DOE psychiatrist at the hearing. The individual submitted two exhibits and presented the testimony of two witnesses, in addition to himself.

II. THE NOTIFICATION LETTER

As indicated above, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.

Paragraph (j) pertains to information indicating that the individual "has been, or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse." As support for this allegation, the Letter cites statements made by the individual during the PSI indicating that (i) he had been arrested for Driving While Intoxicated in 1975 and 1977; (ii) he voluntarily checked himself into a local alcohol treatment program in 1996, where he was advised to stop drinking and received counseling toward that end; (iii) he attended Alcoholics Anonymous (AA) meetings once a week for two or three months after being released from the alcohol treatment program, but has since attended AA sporadically and never completely stopped drinking; (iv) from 1971 to 1975, during a typical week he would drink "a 12-pack" from Monday to Friday and would "party down" on weekends, becoming intoxicated "once a week;" (v) in 1975 the individual stopped drinking hard liquor because it was "rotting [his] gut out" and "just getting [him] in trouble;" and that (vi) he resumed drinking after his 1996 alcohol treatment, consuming two or three beers after work, perhaps a six-pack on non-work days, and became intoxicated about "once a month." This pattern continued up to the date of the PSI. PSI at 5-25.

The letter also cites the DOE psychiatrist's diagnosis that the individual suffers from alcohol abuse with insufficient evidence of reformation or rehabilitation.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a "common-sense judgment . . . after consideration of all relevant information." 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual's conduct; the circumstances surrounding his conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that granting access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. The regulations further instruct me to resolve any doubts concerning the individual’s eligibility for access authorization in favor of the national security. 10 C.F.R. § 710.7(a).

IV. FINDINGS OF FACT AND ANALYSIS

After reviewing the entire record in this matter, I find that the DOE has made a proper showing of derogatory information raising legitimate security concerns under paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material. Specifically, the DOE psychiatrist’s diagnosis of Alcohol Abuse and the individual’s statements during the PSI concerning his drinking adequately justify the invocation of Paragraph (j). Further, the individual has failed to adequately address the security concerns raised by that information.² My reasons for this conclusion are set forth below.

At the hearing, the individual did not contest the DOE psychiatrist’s evaluation. Instead, he attempted to show that he is rehabilitated from any alcohol use disorder and that he does not represent an unacceptable security risk. He attempted to do this primarily through his own testimony and that of a co-worker and of his supervisor.

The individual’s co-worker and supervisor both testified that the individual is a good worker and that they had never seen any indication on the job that the individual was under the influence of alcohol. However, both indicated that their association with the individual was limited to the workplace. Hearing transcript (Tr.) at 6-25.

The individual testified about his history of alcohol use, essentially confirming the information set forth in the PSI and the Notification Letter. However, he indicated that he has reduced his alcohol consumption significantly since the PSI, to an average of approximately two beers a week. Tr. at 35. Regarding his future intentions concerning alcohol, he said, “I’d rather have my job than a can of

² In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005); *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (*affirmed* by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (*affirmed* by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff’d*, *Personnel Security Review*, 25 DOE ¶ 83,002 (*affirmed* by OSA, 1995). In these cases, it was recognized that the excessive use of alcohol might impair an individual’s judgment and reliability, and ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.*

beer. So my intent is to really try to get off of it..” Tr. at 38. Toward that end, he testified that he has been attending AA meetings once a week since June 2006. He further stated that he does all of his drinking at home, and has not had an alcohol-related citation in approximately 30 years. Tr. at 28.

In support of these contentions, the individual submitted a driving history record from the jurisdiction in which the individual lives, showing no citations for the past five years. In addition, he produced a piece of paper which purports to show the dates and times of five AA meetings during the period from August 18, 2006 through September 15, 2006. Each date has a signature next to it (of a person who attended the meeting with the individual) with a statement at the top of the page averring that the individual attended AA meetings on the dates provided.

From the testimonial and documentary evidence presented, I conclude that the individual has been attending AA since at least August 18, 2006 and has probably not had an alcohol- related driving citation in recent years, and I find these factors to be of some limited mitigating value. However, even if I was to fully accept the individual’s contentions that he has been attending AA since June 2006 and has refrained from driving while intoxicated since his two arrests in the 1970s, I could not conclude that he has demonstrated adequate rehabilitation or reformation from his Alcohol Abuse.

In his report, the DOE psychiatrist did not provide specifics about what the individual would have to do to demonstrate adequate reformation or rehabilitation from his disorder. However, the DOE psychiatrist did say that “abstinence from the use of alcohol would be necessary for an extended period of time” in order to achieve these objectives. DOE exhibit 8 at 3. Although the individual testified that, as of the date of the hearing, he had not consumed alcohol for “about two or three weeks,” Tr. at 35, he also indicated repeatedly that he continues to “fudge a little bit and have a beer here and there.” Tr. at 28, 34, 35. It is therefore clear that he has not abstained from alcohol use. Accordingly, after hearing all of the testimony at the hearing and examining the exhibits, the DOE psychiatrist testified that he continued to adhere to the conclusions on page three of his report, *i.e.*, that the individual was not showing adequate evidence of reformation or rehabilitation. Tr. at 56.

I am also concerned about the fact that the individual was diagnosed as alcohol- dependent in 1996 during his participation in the local drug treatment program. Tr. at 50. At the hearing, the individual attacked the credibility of this diagnosis. He said that he saw the diagnostician “for about five minutes. And not judging him or anything, but to me, if you came in there with an alcohol problem, you were an alcoholic; if you came in with a drug problem, you were a drug addict; you came in there for a sex offense, you were a sex . . . offender or something.” Tr. at 27. Furthermore, the DOE psychiatrist indicated that he did not know the basis for this diagnosis, and that the individual did not qualify for a such a diagnosis when the DOE psychiatrist saw him. DOE exhibit 8 at 1, 3. However, the individual has continued to consume alcohol despite suffering from gastritis, a condition that he was informed was caused or exacerbated by his alcohol usage. ³ DOE exhibit 8 at 1, Tr. at 50. This leads me to believe that the individual’s alcohol problem is more severe than he is currently willing to acknowledge.

³ Gastritis is an inflammation of the stomach, especially of its mucous membrane. It was the individual’s continued alcohol use despite suffering from this condition, along with the individual’s previous legal problems, that formed the basis for the DOE psychiatrist’s diagnosis of Alcohol Abuse. Tr. at 51.

V. CONCLUSION

In his report, the DOE psychiatrist stated that the individual continues “to use alcohol and as such shows no adequate evidence of rehabilitation and reformation. Abstinence from use of alcohol would be necessary for an extended period of time in order to achieve full rehabilitation and reformation.” DOE exhibit 8 at 3. Because the individual has not abstained, I believe that these conclusions are still applicable to him.

I therefore find that the individual has failed to adequately address the security concern set forth in the Notification Letter, and I conclude that he has not demonstrated that restoring his clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual’s access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: February 8, 2007

